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SUBJECT: EIGHTH WORKING PARTY ON VIETNAM'S WTO ACCESSION
JUNE 2004

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1. SUMMARY AND COMMENT: The Eighth Working Party on the Accession of Vietnam to the World Trade Organization met June 15 in Geneva to continue its review of Vietnam's trade regime and plans to bring it into compliance with WTO standards. Vietnam's presentation reported progress especially in the intent to eliminate non-tariff barriers and export subsidies, to implement WTO provisions upon accession and to reduce the number of planned tariff rate quotas in its WTO tariff schedule. There is a sense that Vietnam now is committed to changing its trade regime and moving ahead. Vietnam's goal is to finish the negotiations before the end of 2005. While not impossible, considerable progress is necessary. Key concerns remain, e.g., implementing a WTO-based customs system, setting up an SPS system, meeting TBT obligations, and the commitment to remove QRs upon accession was nuanced. The need to improve IPR protection remains, as well as enforcement, though the GVN announced its intention to join the Berne Convention. At the meeting, Vietnam claimed it tabled the full range of BTA commitments to be multilateralized via the accession. Questions remain as to whether Vietnam can actually implement such broad reforms in the near term, and if the pace of work in the National Assembly can even meet Vietnam's deadline.

2. The Vice Minister of Trade led the GVN delegation of 30 plus members. AUSTR Dorothy Dwoskin gave the opening statement for the USG and highlighted GVN progress, the USG commitment to play a constructive role in WP and bilaterals, but with a note that progress in the WP needs to be accompanied by progress on the market access negotiations on goods and services. Key WTO members agree that Vietnam is on track, but will need to reduce tariffs and improve its market access offer. In sum, there was a sense that the GVN is on track, though it is now clear that they will not arrive by next summer. WP Members agreed to provide any addition written questions to Vietnam by the end of July. Vietnam agreed to provide responses by the end of September. This will allow the Secretariat to produce a draft working party report by the end of October. If this schedule holds, the next meeting of the WP has been penciled in for mid-December. In the meantime, Members have tentatively agreed to an agricultural plurilateral on October 29 when capital-based representatives will be in Geneva for an Agriculture Committee meeting. END SUMMARY AND COMMENT.

3. The Eighth Working Party on the Accession of Vietnam to the World Trade Organization met June 15 in Geneva to continue its review of information provided by Vietnam on status of its trade regime and to review progress on market access negotiations on goods and services. Mr. Ho of (previously Korea's Ambassador to the WTO) chaired the meeting. MOT Vice Minister Luong Van Tu led a delegation of key experts from GVN ministries. The focus of the meeting was to continue examination of Vietnam's foreign trade regime based on a revised factual summary of information provided to date and on replies to questions raised by members following the December 2003 session, and to review progress in WTO implementation and in the market access negotiations on goods and services negotiations since then.

4. In his opening remarks, GVN Vice Minister of Trade Luong Van Tu said that the GVN was seeking to continue the quantum leap it had begun the previous spring after WP 6. He enumerated a number of areas in the current documents in which the GVN had made progress since WP 7 in December 2003. These were in commitments Vietnam was prepared to make to comply with the WTO Agreements on TRIMs, Customs Valuation, TBT, Import Licensing Procedures and other agreements upon accession, commitments to eliminate all quantitative restrictions in the form of quotas and restrictive licensing upon accession, to progressively liberalize trading rights of foreign invested enterprises and to comply with most SPS obligations upon accession, with only a couple of selected transitional requirements. Tu also committed to remove all agricultural export subsidies for coffee upon accession and

phase out the rest within three years.

15. On market access, Tu noted that the GVN has improved its offer so that, in his view, many of Vietnam's commitments would go beyond those made by recently acceding members. On trade in goods, VN offered to bind its entire tariff schedule except for petroleum products. The average bound rate would be reduced by 4% to an average of about 18% after all concessions are phased in. All ODCs except on petroleum products will be eliminated on a phased schedule and bound at zero. The number of requested TRQs has also been substantially reduced. On services, there has been further revision to meet most requests from trading partners. GVN has eliminated previous MFN exemptions in financial services. On the goods side, he claimed that 90% of the tariff requests of WTO members had been met (Note: A claim that cannot be verified and is improbable. End note). On services, he indicated that Vietnam's offer contains some areas that are already BTA plus (unspecified). Tu said that the GVN had had bilaterals with 14 members since December, some of which are close to conclusion. As of June 14, GVN had already met with 10 members since arriving in Geneva the previous week. It thanked the US, EU, China, Japan and Latin American countries for their efforts on bilaterals. In addition, VM Tu pointed to the efforts by the National Assembly to pass legislation to speed up international economic integration. Tu said that the above showed GVN's determination to join WTO as soon as possible. He acknowledged the technical assistance of various members (Note: We believe that the National Assembly's pace of activity will be a major factor in whether Vietnam will be able to meet its own accelerated timetable. End note).

16. A number of members offered statements in support for GVN's efforts. They included the EU, the Philippines (speaking for ASEAN), Chinese Taipei, Morocco, Australia, Switzerland, the US, Canada, Korea, Argentina, Norway, Brazil, Japan, Columbia, Uruguay, China, New Zealand, Hong Kong, and Cuba (which said it had completed its bilateral negotiations with VN). Assistant USTR for WTO and Multilateral Affairs Dorothy Dwoskin gave the opening statement for the USG and highlighted GVN progress, noted Minister Tuyen's emphasis on transparency during his recent meetings with USTR Zoellick, confirmed USG commitment to play a constructive role in WP and bilaterals, but with a note that progress in WP needs to be accompanied by progress on the market access negotiations on goods and services. (Note: Other members in the USG delegation were Cecilia Klein and Elena Bryan, USTR; Susan Rzemien, Treasury; William Tagliani, USTR/Geneva; and Sam Watson Econ/C at US Embassy Hanoi.)

17. The EU rep noted that it has important trade relations with Vietnam and recognized VN is a developing country with problems but much economic potential and the potential to be an active WTO member. For these reasons, the EU wants to show flexibility to VN with respect to its development status. The GVN is improving the quality of its submissions and moving to a more active phase of its accession. The EU had met twice with the GVN since December, on June 14 in Geneva and previously in Brussels. Vietnam's offers have let the EU move to a more active phase. The EU will soon come to Hanoi to continue its bilaterals with a desire to conclude bilaterals soon. (NOTE: This took place the week of July 5. End Note.)

18. The WP proceeded to review Vietnam's trade regime, using the revised factual summary WT/ACC/SPEC/VNM/4/Rev.1 as a framework for the discussions and referring to additional documentation provided by Vietnam in response to questions from delegations at the last meeting in December 2003. The factual summary document will evolve into Vietnam's draft report of the working party, as issues are raised, discussed, and resolved, and commitments are confirmed, and will eventually contain both the report of the working party and protocol of accession approved by WTO members.

19. Investment: The GVN will seek to reduce the differences between regulations for foreign and domestic investors through a unified investment law. Vietnam has already begun to eliminate restrictions on technology transfer, limits on capital. Vietnam has removed the requirement for foreign firms to hire workers through agency so they can now be hired directly. The GVN committed to implement TRIMS on accession thus eliminating export requirements and tax distinctions between foreign and domestic firms. In response to a US question about how it will implement these changes, the GVN said it would produce an action plan for implementing TRIMS.

10. State Ownership and Privatization: The GVN committed to expand the areas of equitization to include transport, oil and gas, insurance, telecom (including telecom international gateway services), transportation, and "culture" over the next two years. Equitization will take place regardless of whether the enterprises are profitable. It will also not

discriminate among different types of enterprises and will change regulations to eliminate those protecting "public interest" enterprises. The GVN will continue to eliminate subsidies and support for state owned enterprises (SOEs). Regulations are being drafted and will be provided to members when complete.

¶11. Pricing Policy: Dual pricing on electricity will end and a uniform price will be set by December 31, 2005. This will mark the end of Vietnam's dual pricing policy vis--vis foreign firms

¶12. Competition Policy: The national assembly is discussing the competition law and the GVN expects it to be promulgated by the end of the year as scheduled. In the coming months, the National Assembly will put a draft on the Internet to solicit public input.

¶13. Framework for making and enforcing policies: U.S. noted Vietnam's commitments in response to questions in WT/ACC/VNM/32 concerning application of national treatment, MFN, and transparency, right of appeal, and the authority of central and sub central entities in trade policy issues, and sought their inclusion in the working party report record.

¶14. Trading Rights: Vietnam offered to phase in trading rights for foreign invested enterprises. Upon accession, Vietnam offered to grant trading rights to foreign invested enterprises in the production and manufacturing sectors and to 49% foreign owned joint ventures. No later than January 1, 2008, joint ventures where foreign capital does not exceed 49% would receive trading rights and 100% foreign invested enterprises would be given trading rights no later than January 1, 2009. GVN maintained that as the resale of imported goods belongs under distribution, it was not required to provide equal opportunity for the domestic sale of imported goods and that it will take a reservation for some items because its enterprises need to become used to the competitive environment. Vietnam enterprises play an important role in importing and selling goods. The transition is only five years. Vietnam appealed to the Working Party members to show understanding of what the National Assembly will come up with on the law on laws. The United States explained that there is a difference between distribution of goods and the right of imported goods to be distributed on equal terms with domestic goods, something that Vietnam did not yet provide for. Granting full rights for import and export to foreign firms was not the same as granting rights for domestic distribution. The U.S. and Australia pushed for a more rapid phase out, and the U.S. asked that the WP report note that foreign and domestic firms had the same export rights.

¶15. Tariff Rate Quotas: Vietnam noted that it had further reduced the number of product lines subject to TRQs and did not intend to use import licensing to administer these quotas, i.e., would use a first come first served regime. Now there are just 5-6 product lines that comprise several hundred tariff lines. Both In- and out of- quota rates are lower in the new offer, making it more transparent and WTO consistent. GVN is willing to negotiate on TRQs including the in-quota volume allowed. GVN does not believe that managing TRQs will be expensive and difficult. It will not keep quantitative restrictions as a non-tariff barrier. All these issues can be discussed in the bilaterals. GVN confirmed that it would only keep ordinary duties and charges (ODC) on two items (pipes and PVC). GVN said there are still some TRQs in agricultural sector. The GVN needs to get current import and export data for these areas in order to accurately apply TRQs from January 2005. The GVN noted that although many items remain subject to import licensing requirements, in Vietnam's view, all could be justified under WTO exemptions, e.g., Articles XX and XXI of the GATT. Vietnam will continue to apply these restrictions after accession but will eliminate all licenses not consistent with WTO exemptions at that time. The GVN rep stated that 175 cc motorcycles couldn't be imported because many young Vietnamese organize racing on the streets and importing such motorbikes could cause problems. Also, with large bikes in the country, the police might not catch people they were pursuing. GVN believes this restriction is non-discriminatory and is consistent with national treatment. On the import of used items, there is no way to detect whether they are used. New Zealand, supported by Australia, termed the use of TRQs an "obstacle to progress" in the negotiations. The U.S. and other delegations cautioned Vietnam that TRQs were difficult to administer and their use by other WTO members to tariffy agricultural QR's during the Uruguay Round had a specifically historical context that did not exist for Vietnam. They urged Vietnam not to use TRQs, but find tariff-only solutions. Australia and other Cairns Group countries took sharp exception to Vietnam's stated intent to use TRQs to "tariffy" previously existing quantitative restrictions, and also urged that another way be found to regulate this trade.

¶16. Quantitative Restrictions and Import Licensing: The US said that the GVN's offer to eliminate quantitative import restrictions was an important step and asked whether this included the restricted items in VNM/32 tables 5 and 5.1, also whether other quantitative restrictions remained to be addressed. Australia associated itself with US comments on the need to phase out QRs. The US noted that there were ways besides import bans such as that on motorcycles over 175 cc to deal with safety concerns such as internal mechanisms. The EU also expressed concern about the motorcycle ban. As for the 175 cc motorcycle ban, the GVN argued that this was necessary because many young people race motorbikes in the streets and the police need to have bikes fast enough to catch criminals. The GVN intends to bring import licenses into compliance with WTO rules by accession and to remove taxes on wine, beer and tobacco. Australia also noted that GVN needed to be sure that this was adequately reflected in its action plan. The GVN responded that although many items were subject to import license requirements, all conformed with WTO exemption rules. GVN will continue to apply these, but will remove all that are not consistent with WTO rules.

¶17. Internal Taxes applied to Imports The EU welcomed GVN efforts to reduce taxes applied to imported beer, but asked whether there was discrimination with domestic beer. The GVN said that there was no discrimination between domestic and imported beer, rather a tax based on consumption rather than on the origin of the product. Australia asked about the phase out of these taxes in December 2006 and the need to comply with GATT Article III. Korea said that internal taxes especially the excise taxes on cars and cigarettes were excessive with no clear rationale. The GVN argued that automobiles were an infant industry, but they would like to discuss in the next meeting.

¶18. Customs Valuation: Upon accession, the GVN committed to apply the Customs Valuation Agreement and eliminate "minimum prices," which are currently used to determine valuation. The US, EU and Australia all praised this offer.

¶19. Non-tariff barriers: The GVN pledged to eliminate all non-tariff barriers in the form of quotas and restrictive licenses upon accession. The GVN also committed to remove the import prohibition on cigarettes and cigars upon accession. When asked how this would be accomplished or whether legislation was in development to implement these reforms, the Vietnam delegation could give no answer.

¶20. Preshipment Inspection: The US raised the need for the GVN to create a preshipment inspection service in compliance with WTO rules with fees based on the cost of the service provided and not on the value of the traded good. The USG also noted that the GVN should commit in writing to take responsibility for ensuring the Preshipment Inspection service complied with WTO. The GVN said its regulations on preshipment inspection would comply with the WTO and GVN will adjust its portion to reflect USG comments on preshipment.

¶21. Antidumping: The USG suggested GVN provide legislation to members for review soon and commit not to use antidumping measures until WTO consistent legislation was in place. Columbia asked whether the May 2002 safeguards ordinance complied with the WTO. The GVN said it approved an antidumping ordinance in April 2004 and will convey a copy of it to members.

¶22. Rules and Certificate of Origin: USG urged GVN to comply with WTO rules on requirements for rules and certificates of origin. EU asked whether the GVN was prepared to issue a national government document on rules of origin to be WTO consistent. Chinese Taipei asked whether there were any requirements to approve or issue a certificate of origin. Exporters and importers currently must apply for eligibility for certificates of origin. Rules of origin create the maximum conditions favorable for importers and exporters. Certificates of origin cannot be bought from many agencies.

¶23. Export Regulations: The USG asked the GVN to review and rationalize its export restrictions to comply with WTO provisions. Australia called for a clear statement in report of GVN commitment to eliminate export ratio requirement for foreign firms on accession, and elimination of direct payments contingent on export performance on accession. Switzerland called for the elimination of export requirements on accession. GVN confirmed that only five goods are subject to export tax: crude oil, animal breeds, wood materials, scrap metal, and perfumed wood. USG asked why GVN applied duties of 35 to 45% on export of ferrous and non-ferrous scrap and whether this level of duty permitted export, but the GVN did not respond.

¶24. Export Subsidy: Australia called for elimination of export subsidies on accession, The GVN committed to eliminate agricultural export subsidies for coffee upon

accession and for other products (i.e. rice, pork, vegetables, and fruit) within three years of accession. Regarding a USG question on export subsidy, the GVN said that they were committed to removing trade-distorting measures on accession. Nevertheless many countries use export subsidies and that is why the Uruguay Round created Annex 7 for countries with a low level of development. The GVN will eliminate subsidies related to the ratio contingent upon export performance within five years of the date of accession. They want to show flexibility until the GNP per capita reaches \$1000. (Note: Vietnam is not an Annex 7 country, a register of low income countries developed at the time the WTO was established. Nor is it an LDC. As a consequence it must eliminate industrial subsidies conditioned on import substitution or export performance. End note)

126. Rice exports: The GVN said that rice exports harm its consumers, but GVN is taking into consideration making 1033 changes on restrictions. WTO members can maintain export restriction measures as long as this is consistent with GATT Article 11. (Note: It is unlikely that Vietnam's restrictions are Article XI compliant. End note)

127. SPS and TBT: Australia noted that the GVN sought a transition on the establishment of an SPS system until 2008 and that the GVN action plan needed more detail on implementation plans. Australia asked the status of SPS implementation, GVN needs for technical assistance and urged the GVN to speed up implementation of SPS. Australia also asked whether ASEAN would abide by international SPS standards. Canada, New Zealand shared these concerns and sought an explanation for the reason a transition period was needed. Noting the complexity of this issue the EU, suggested an SPS plurilateral, expressed concern with control procedures and urged the GVN to meet international standards rather than signing multiple bilateral agreements. The USG associated itself with the Australian comments and asked for more details on technical assistance requirements as well as details of GVN's SPS requirements for import of meat and poultry, live plants, horticultural products and grain as well as technical requirements for food product certification, labeling and packaging.

128. The GVN responded on SPS and TBT as follows. In Working Parties 6 and 7, the GVN requested a two to three year transition after accession based on Article 14 for SPS and TBT. The US and EU have given Technical assistance on SPS and help in establishing an SPS enquiry point. However, GVN needs time to adjust its laws and regulations to implement the requirements of the agreement. Vietnam commits to establish a National Enquiry and Notification point by the end of 2004 and to have it fully operational upon accession. Vietnam commits to implement the SPS Agreement upon accession, except for a transitional period up to 2008 for obligations with regard to harmonization, equivalence and Control, Approval and Inspection Procedures. In case the GVN can't comply fully they will put 1-2 obligations for enquiry points at end 2004 and operations in 2005. The GVN has assigned MARD as the enquiry point and it is working with relevant agencies to address their concerns. The GVN expressed appreciation for technical assistance from the US, EU and Australia provided in this area and indicated a desire for such assistance to continue. The GVN will submit in writing areas where assistance is required. The GVN is reviewing domestic standards and will bring them into line with international standards. The GVN intends to prepare an action plan on these steps. (Note: We would like to explore what additional assistance could be provided to accelerate Vietnam's implementation of these two important WTO Agreements. End note)

129. TRIMS: Canada asked whether the GVN could confirm that the table of products with an export ratio of 80% was exhaustive and whether measures in paragraph 30 were included in those referred to in paragraph 208. Chinese Taipei asked whether the export requirements would be eliminated on accession. The GVN acknowledged that measures inconsistent with TRIMS remain. For example, one measure compels enterprises to use local materials, but the GVN intends to remove such measures on accession. The GVN also wants to maintain investment incentives at the request of many foreign investors. Export requirements are needed to make them consistent with the agreement. Table 11 is comprehensive and includes all products with an export ratio of 80%.

130. Government Procurement: The USG urged the GVN to consider joining the WTO Agreement on Government procurement, initially as an observer and to identify areas where technical assistance would be helpful. GVN replied that it is not yet prepared to join the plurilateral and this is not required of WTO members.

131. Trade in Transit: The US noted that although the GNV had addressed the issue of transit fees, it had not

addressed the overall issue of transit to trade of other WTO members as in Article V. The EU noted it also shared this concern. The GVN will comply fully with the USG comment on accession.

132. Agricultural Policies: Australia noted that the agricultural plurilateral had a good discussion of GVN policy in domestic support, but all questions were not yet clear and Australia would submit some in writing. The GVN had made good progress on binding export subsidies at zero. Called for the GVN to make a binding commitment to remove subsidies, Australia said a tariff only regime was should be the GVN's goal. (Note: This is another area where U.S. technical assistance, probably in the form of training Vietnamese officials on how to construct and maintain their agricultural domestic support tables, could be provided to assist in the WTO accession process. End note

133. Trade in Services: Banking system: The EU asked whether commercial banks were loaning to rural areas and the status of loans to private farms. The GVN said that the Bank for Agricultural and Rural Development that specializes in loans for rural development and also the Social Policy bank to serve the needs of rural areas. (Comment: See broader discussion in report on bilateral meeting. End note.)

134. Core labor Standards: When Malaysia objected to the inclusion of core labor standards in the report, the GVN replied that their expert was not on the delegation, but they would convey the message and it would be better to discuss with the ILO.

135. TRIPS: Several members (Canada, the US and EU) expressed concern with the lack of the GVN's progress on IPR. Canada called for the GVN to adjust its copyright action plan to comply with TRIPS and the time frame for accession. The US said it submit written questions and asked the status of GVN joining the Berne Convention. The EU asked the status of the action plan, about industrial property fees and charges, non-disclosure and will submit written questions. The GVN replied that it needed to revise regulations on copyright to make them more specific. For example, the Ministry of Construction on Architecture had specified many new regulations. The Ministry of Culture had issued decree 76 which will improve regulations as part of the action plan. The GVN schedule includes continuous amendments on these issues. The GVN is considering whether to issue a separate law on intellectual property. The National Assembly has passed a new Civil Procedure Code. The GVN is making its best efforts to prepare for TRIPS implementation as well as for meeting other commitments in this area. Recently the President of Vietnam decided that GVN should join the Berne Convention. GVN is now preparing for this. A 1996 action plan on TRIPS implementation had been delayed because of its complexity, but the GVN will exert best efforts in the future. In addition, GVN will take note of questions and concerns from various members on this issue of IPR. Canada asked when the GVN would be TRIPS compliant and GVN affirmed that it would comply with TRIPS on accession and be compliant by the end of 2004.

136. Trade Agreements: Australia called on GVN to accept bracketed text containing a standard commitment on notifying WTO members of preferential trade agreements and their conditions (paragraph 369). The GVN did not reply.

137. MFN: Australia raised the difficulty it and others (including the US and New Zealand) had had in obtaining MFN treatment in certain areas (in line with the EU) despite the GVN's obligation. The GVN replied that it would fully apply MFN before and upon accession to comply with bilateral and the WTO agreements and accession commitments (i.e., sidestepping the fact that its current practice was a violation of the MFN clause in our bilateral agreement.

138. Legislative Developments: The Chairman noted that the GVN needs to speed up the pace of passage of laws and their implementation to speed up the accession. The GVN gave an update on laws passed noting that the National Assembly had taken action on such as the antidumping law and the civil procedure code.

139. Next Steps: After conferring with Vice Minister Tu, the Chairman outlined the schedule of next steps. WTO members should submit written questions by the end of July, the GVN should respond by mid-September. Optimally, The Secretariat will distribute revised documents by late October/early November and there would be another working party meeting in early December. The Chairman asked that bilaterals intensify.

140. Note: USTR staff in Geneva and Washington cleared this cable.
BURGHARDT